

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

GUADALUPE SOLIS ALVAREZ, No. CIV S-05-0689-DFL-CMK-P

No. CIV S-05-0689-DFL-CMK-P

Petitioner,

VS.

## FINDINGS AND RECOMMENDATIONS

JAMES YATES, et al.,

## Respondents.

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 15, 2005, petitioner filed a notice of appeal. That document, however, did not contain proof of service on respondents. On August 20, 2005, the court directed petitioner to serve a copy of the August 15, 2005, notice of appeal on respondents and to file proof of such service with the court within 15 days of the entry of the order. The order warned petitioner that failure to comply could result in the imposition of sanctions. To date, petitioner has not complied with the court's order.

The court must weigh five factors before imposing the harsh sanction of dismissal.

See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate

1 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,  
2 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where  
3 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.  
4 1986). Dismissal has also been held to be an appropriate sanction for failure to inform the district  
5 court and parties of a change of address pursuant to local rules. See Carey v. King, 856 F.2d  
6 1439, 1440-41 (9th Cir. 1988) (per curiam).

7 Having considered these factors, and in light of petitioner's failure to comply with  
8 court rules requiring proofs of service on all documents filed with the court and the court's  
9 August 24, 2005, order, the court finds that dismissal is appropriate.

10 Based on the foregoing, the undersigned recommends that this action be dismissed  
11 and all pending motions be denied as moot.

12 These findings and recommendations are submitted to the United States District  
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days  
14 after being served with these findings and recommendations, any party may file written objections  
15 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
16 and Recommendations." Failure to file objections within the specified time may waive the right  
17 to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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19 DATED: October 20, 2005.

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22 CRAIG M. KELLISON  
23 UNITED STATES MAGISTRATE JUDGE  
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